

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SEARS LOGISTICS SERVICES, INC. :
Plaintiff, :
vs. : Case No. 2:14CV-999
PHOENIX WAREHOUSE, : Judge Watson
Defendant. : Magistrate Judge Kemp
JURY DEMAND ENDORSED
HEREIN

ANSWER OF DEFENDANT PHOENIX WAREHOUSE

Defendant Phoenix Warehouse (“Phoenix”) for its answer to Plaintiff Sears Logistics Services, Inc.’s Complaint, states as follows:

FIRST DEFENSE

1. Denies for want of knowledge the allegations contained in Paragraph 1 of Plaintiff’s Complaint.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit.
9. Admit.

10. Admit.
11. Defendant states that the Amendment speaks for itself and denies any remaining allegations within Plaintiff's Paragraph 11 for want of knowledge.
12. Deny for want of knowledge.
13. Admits only that Plaintiff transmitted monthly payments of \$211,608.33 to Defendant for 72 months.
14. Admit that Defendant did not notify Plaintiff that Plaintiff was transmitting \$211,608.33 monthly payments to Defendant for 72 months but denies any remaining allegations within Plaintiff's paragraph 14 as conclusions of law couched as factual allegations.
15. Admit only that Plaintiff began paying monthly payments to Defendant in June 2014 in the amount of \$189,500.00.

16. Admit only that Plaintiff has demanded payment of funds that it sent to Defendant and deny the remaining allegations of Plaintiff's Paragraph 16 as conclusions of law couched as factual allegations.

SECOND DEFENSE

17. Incorporates by reference the above paragraphs of this Answer as if fully rewritten herein, in response to Paragraph 17 of the Plaintiff's Complaint.
18. Deny.
19. Deny.
20. Deny the allegations of Plaintiff's Paragraph 20 as conclusions of law couched as factual allegations.

21. Deny the allegations of Plaintiff's Paragraph 21 as conclusions of law couched as factual allegations.

22. Deny the allegations of Plaintiff's Paragraph 22 as conclusions of law couched as factual allegations.

23. Deny the allegations of Plaintiff's Paragraph 23 as conclusions of law couched as factual allegations.

24. Deny.

25. Denies any allegations contained within the Plaintiff's Complaint not specifically admitted to herein.

THIRD DEFENSE

26. Defendant reasserts and realleges each and every statement and defense asserted above.

27. Plaintiff's claims are barred by Plaintiff's conduct, whether such conduct is characterized as contributory negligence or assumption of the risk.

FOURTH DEFENSE

28. Defendant reasserts and realleges each and every statement and defense asserted above.

29. Recovery by Plaintiff is barred by the intervening and superseding conduct of others.

FIFTH DEFENSE

30. Defendant reasserts and realleges each and every statement and defense asserted above.

31. Plaintiff failed to mitigate its damages.

SIXTH DEFENSE

32. Defendant reasserts and realleges each and every statement and defense asserted above.

33. Plaintiff fails to state a claim against this Defendant upon which relief can be granted.

SEVENTH DEFENSE

34. Defendant reasserts and realleges each and every statement and defense asserted above.

35. Plaintiff's claims are barred by the applicable statute of limitations.

EIGHTH DEFENSE

36. Defendant reasserts and realleges each and every statement and defense asserted above.

37. Plaintiff's claims are barred by waiver, laches, release, estoppel, and/or accord and satisfaction.

NINTH DEFENSE

38. Defendant reasserts and realleges each and every statement and defense asserted above.

39. Plaintiff's equitable claims are barred by the existence of a written agreement.

TENTH DEFENSE

40. Defendant reasserts and realleges each and every statement and defense asserted above.

41. Plaintiff's claims are barred as it made voluntary payments and/or a mistake of law.

ELEVENTH DEFENSE

42. Defendant reasserts and realleges each and every statement and defense asserted above.

43. Plaintiff's claims are barred as Defendant detrimentally changed its position in reliance on the payments.

Respectfully submitted,

LANE, ALTON & HORST LLC

/s/ Edward G. Hubbard

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Trial Counsel for Defendant

JURY DEMAND

Defendant hereby demands a trial by jury in this action as to all issues so triable.

/s/ Edward G. Hubbard

Edward G. Hubbard (0067784)

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing was duly served via the court's electronic filing system on this 18th day of May, 2015, upon the following:

Charles E. Tichnor, III
Gregory P. Mathews
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Attorneys for Plaintiff

/s/ Edward G. Hubbard
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